

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Civil Division)

N°:

500-17-071038-122

GORDON JAMES RAMSAY

[REDACTED]

Plaintiff,

vs.

9226-7558 QUÉBEC INC., a
corporation, having its head office at
381, Avenue Laurier, Montreal, Quebec
H2V 2K3

and

DANNY LAVY

[REDACTED]

Defendants

SUZANNE Côté

**MOTION TO INSTITUTE PROCEEDINGS
(Art. 110 C.C.P.)**

In support of its action the Plaintiff respectfully submits as follows:

SUMMARY

1. Mr. Gordon James Ramsay ("Ramsay"), Plaintiff seeks damages from 9226-7558 Québec Inc. ("9226") and Mr. Danny Lavy ("Lavy"), Defendants, on account of Defendants' repudiation of a License

Agreement (the "**Agreement**") entered into on July 25, 2011, for the use of Plaintiff's name and likeness in association with a restaurant owned and operated by Defendants, located at 381 Avenue Laurier (the "**Restaurant**"). The Restaurant formerly known as the Laurier Gordon Ramsay opened on August 9, 2011;

2. In addition, Plaintiff also seeks moral and punitive damages from Defendants with respect to the false and defamatory comments made by Lavy, both personally and on behalf of 9226, regarding Plaintiff and his role in the Restaurant;
3. Throughout the parties' business relationship, Plaintiff performed all of his obligations. Furthermore, Plaintiff and his team provided advice and assistance above and beyond the scope of the Agreement, on a voluntary basis;
4. On or about February 15, 2012, Defendants publicly announced that they were severing their association with Plaintiff. The Agreement itself, however, had been terminated on February 11, 2012 as a result of Defendants' repudiatory breach of contract;
5. On and around February 15, 2012, Defendants made unfounded and untrue public comments about Plaintiff and his role in running the Restaurant, and further breached the Agreement by announcing their alleged termination of the Agreement to the media;
6. Defendant 9226 has also failed to pay all fees due and owing to Plaintiff;
7. Further, Plaintiff is entitled to damages for the unrealized "**Licence Fees**" (as this term is defined in the Agreement) that would have been earned at least until August 9, 2016, but for Defendants' repudiatory breach of the Agreement;
8. As a result, Defendants, *in solidum*, are bound to pay to Plaintiff the following:
 - i. The Licence Fees due and owing for the fourth calendar quarter of 2011, in the amount of \$109,120.25, plus interest thereon at a rate of 8 percent per annum calculated from January 30, 2012;
 - ii. The Licence Fees due and owing, in the amount of \$51,780.96, for the period from January 1, 2012 to February 11, 2012, being the date on which the Agreement was terminated, following its repudiatory breach by Defendants, plus interest thereon at a rate of 8 percent per annum calculated from February 18, 2012;
 - iii. The future Licence Fees which would have been payable but for Defendants' repudiatory breach resulting in termination of the

Agreement, in the amount of \$2,023,156, for the period from February 12, 2012, to August 9 2016;

- iv. The amount of \$23,425.94 representing the costs incurred by Plaintiff in visiting and promoting the Restaurant at the opening in August 2011, plus interest thereon at the legal rate calculated from August 9, 2011;
 - v. Moral damages suffered by Plaintiff, in the amount of \$250,000, for the defamatory comments made against him by Defendants in the media;
 - vi. Punitive damages in the amount of \$250,000, for the defamatory comments made against Plaintiff in the media by Defendants, which Defendants knew or were aware would have a prejudicial impact on Plaintiff's reputation; and
 - vii. The legal costs incurred by Plaintiff to enforce and protect his rights under the Agreement, pursuant to clause 7.1 of the Agreement, as well as the legal costs incurred by him to protect and mitigate the damage to his reputation;
9. As will be demonstrated below, the contractual relationship between Plaintiff and Defendant 9226 are governed by English law, and any dispute between the parties shall be submitted to Quebec Courts, in the district of Montreal;
- A. THE PARTIES**
- 10. Plaintiff, Ramsay, is a world-renowned chef residing in London, England;
 - 11. Plaintiff has opened a number of restaurants around the world bearing his name;
 - 12. His first restaurant, *Restaurant Gordon Ramsay*, was awarded the most prestigious accolade in the culinary world, three Michelin stars and the Plaintiff is one of only four chefs in the UK to maintain three Michelin stars;
 - 13. Plaintiff has also become a well-known international television personality, starring in the US reality shows *Ramsay's Kitchen Nightmares*, *Hell's Kitchen* and *Masterchef US*;
 - 14. Furthermore, Plaintiff has published a number of books, many of which have become best sellers throughout the world;

15. Defendant 9226 is a corporation constituted under the laws of Quebec, having its head office at 381 Avenue Laurier, Montréal, as it appears from a copy of the registration of Defendant 9226 from the *Registre des entreprises du Québec*, communicated in support hereof as **Exhibit P-1**;
16. Defendant 9226 owns and operates the Restaurant;
17. The Restaurant opened as the Laurier Gordon Ramsay, and since February 17, 2012, is known only as Laurier 1936;
18. Defendant Lavy is a businessman who resides in Montreal;
19. Defendant Lavy is one of two shareholders of 9226, and is also one of its directors and officers, as it appears from a copy of the registration of Defendant 9226 from the *Registre des entreprises du Québec* (Exhibit P-1);
20. As demonstrated further below, since the beginning of the association of Plaintiff with the Restaurant, Defendant Lavy has acted not only as the main representative of Defendant 9226, but also in a way that clearly suggests that he is the controlling mind of the corporation;

B. THE LICENSE AGREEMENT

21. As is set out at paragraph 1 above, the Agreement licensed the use of Plaintiff's name and likeness in association with the Restaurant. A copy of the Agreement dated July 25, 2011 and emails enclosing signature pages are communicated *en liasse* in support hereof as **Exhibit P-2**;
22. During the 6-month period that the Agreement lasted, the only complaints formulated by Defendants consisted of the following:
 - i. Plaintiff and/or his team failed to provide concrete promotional and marketing initiatives for the Restaurant;
 - ii. Plaintiff and/or his team did not provide a menu of the type expected;
 - iii. Plaintiff and/or his team did not understand the Montreal market;
 - iv. Plaintiff and/or his team did not provide the expected assistance to the kitchen staff; and
 - v. Intermittent complaints that the Restaurant was not profitable;
 as will be more fully described in Section C of the present proceedings;

23. However, the evidence in support of the present Claim shows that Plaintiff was not in default of fulfilling his obligations under the Agreement;
- (i) **Scope of the Agreement : Limited to the Right to Use Plaintiff's Name and Likeness**
24. As appears from clause 2.1 of the Agreement, Defendants acknowledged the importance and commercial value of Plaintiff's name, likeness and recipes and clause 2.1 defined the extent of Defendant 9226's right to use of Plaintiff's name, likeness and recipes as follows:
- "2.1 Subject to the provisions of this agreement and in consideration of 9226's payment of the License Fee (as defined in Section 3 below), GR [Plaintiff Gordon Ramsay] grants to 9226 the limited, non-exclusive, non-sublicensable, non-transferable License to:
- 2.1.1 use the GR Name, the GR Likeness and Recipes solely in connection with the operations and management of the restaurant, for the duration of the Term and the Renewal Term (the "Licensed Rights");
- 2.1.2 to use the recipes in the Restaurant during the Term and the Renewal term. The recipes shall at all times remain the exclusive property of GR. [...]"
25. Plaintiff's obligations under the Agreement consisted primarily to:
- "4.2.1 as reasonably necessary, use commercially reasonable efforts to promote the operations of the Restaurant; and
- 4.2.2 not hold himself out as having any right or authority to assume or to create any obligation or responsibility on behalf of or in the name of 9226 or to bind 9226 in any manner whatsoever.";
26. Plaintiff was also required:
- i. not to unreasonably withhold or delay consent for requests made by Defendant 9226 with respect to the use of Plaintiff's Name, Recipes or Plaintiff's Likeness (clause 2.10.1); and
 - ii. to promptly communicate knowledge of any actual or suspected infringement of the Licensed rights (clause 2.13);

(ii) **The Plaintiff is not Responsible for the Operations and Management of the Restaurant**

27. Plaintiff's obligations under the Agreement did not include managing or operating the Restaurant, or providing any advice to Defendant 9226, its officers, directors or employees with respect to the Restaurant;
28. On the contrary, the Agreement clearly stipulates that Plaintiff has no authority over the management of the Restaurant:
 "2.9 9226 shall have the final decision in respect of the management and operations of the Restaurant, subject to the terms of this agreement.";
29. Defendant 9226 was obliged under clause 4.1.3 of the Agreement to keep Plaintiff "reasonably informed of its proposed activities in relation to the Restaurant, the Licensed Rights, GR Names, Recipes and GR Likeness". However, Plaintiff was given no control over the manner in which Defendant 9226 ran the Restaurant;
30. The only positive obligations on Plaintiff under the Agreement are those set out at paragraphs 25 and 26, above;
31. Furthermore, clause 9.1 of the Agreement states that "GR and 9226 are and shall be independent contractors and neither Party shall be, or be deemed to be, the partner, agent or legal representative of the other Party for any purpose whatsoever.";

(iii) **Payment of Plaintiff's Fees and Costs**

32. Under clause 3.1 of the Agreement, Defendant 9226 agreed to pay to Plaintiff Licence Fees equal to 8 percent of Net Sales (as defined in the Agreement) on a quarterly basis in consideration for the use of the "GR Name, the GR Likeness and Recipes" (all as defined in the Agreement) in connection with Restaurant;
33. Defendant 9226 also agreed to pay interest at a rate of 8 percent per annum on any Licence Fees not paid in accordance with clause 3.2 of the Agreement;
34. In addition, Defendant 9226 is required, among other things, to:
 - i. Bear the costs incurred for all advertising and promotional activities related to the Restaurant, pursuant to clause 2.10; and
 - ii. pay the "costs of travel, lodging and food reasonably incurred by GR and members of the organization when visiting the Restaurant" up to a yearly maximum of \$40,000, pursuant to clause 3.8;

(iv) **Term and Termination**

35. As per section 8.1, the Agreement had a ten (10) year term which was to expire on the tenth anniversary of the date the Restaurant first opened to the general public;
36. Defendant 9226 could terminate the Agreement prior to the expiry of the ten (10) year term only in the following circumstances:
 - i. if Plaintiff made a petition in bankruptcy or other insolvency proceeding as set out in clause 8.4,
 - ii. if *"at the fifth anniversary of this agreement, the Restaurant has not achieved in average for the five first calendar years at least \$4 million CAD of Net Sales"* under clause 8.8, or
 - iii. pursuant to clause 8.5 of the Agreement, which sets out as follows:
"8.5 Either Party may terminate this agreement in the event that the other Party breaches a material provision hereof, provided that the first Party gives written notice to the second Party of the breach. The second Party shall have thirty (30) days from receipt of such notice to remedy the breach. In the event that breach is not remedied within this period, the first Party may, in its sole discretion, immediately thereafter terminate this agreement."
37. None of the above procedures stipulated under the terms of the Agreement was followed by Defendant 9226 in purporting to terminate the said Agreement, and this constituted a repudiatory breach of the Agreement, as further demonstrated below;

(v) **Protection of Plaintiff's Name and Reputation**

38. Plaintiff's name and reputation is a commercial brand that brings credibility and value to those individuals, restaurants, and products with which it is associated by way of prior written permission of Plaintiff;
39. Plaintiff's name and likeness have been licensed around the world for use on various products, in particular, kitchenware;
40. His name has also been licensed for use in connection with eleven (11) restaurants in the United Kingdom and ten (10) restaurants elsewhere in the world, including in Los Angeles, New York, Dublin, Versailles, Siena, Cagliari, Tokyo and Doha;
41. The value of Plaintiff's name is most significant in relation to use in association with restaurants, given that Plaintiff is one of the world's most recognized chefs;

42. The value of the name depends, in part, upon the performance and the public perception of Plaintiff's commercial ventures and the individuals and companies associated with those ventures;
43. Defendants decided to associate themselves with Plaintiff, and his name, to launch their Restaurant because of the value and the consequent benefits that association would bring;
44. Negative and critical public comments regarding the Plaintiff could have the effect of decreasing the commercial value of his name and any commercial ventures associated with it;
45. Due to the above-mentioned considerations, under the terms of clause 2.6.5 of the Agreement, Defendant 9226 undertook to protect the value of the licensed rights it acquired and Plaintiff's reputation. To this end, the Agreement stipulates that Defendant 9226 shall:

"not do, omit to do, or permit to be done, any act which will, or will be likely to, weaken, damage or be detrimental or prejudicial to the Licensed Rights, GR Name, Recipes or the GR Likeness or the reputation or goodwill associated with the Licensed Right, GR name, recipes or the GR Likeness or GR personally."
46. Furthermore, under clause 2.6.7, Defendant 9226 agreed to:

"not use the GR name, Recipes or the GR Likeness in any way other than in the furtherance of and pursuant to this agreement."
- (vi) **The Entire Agreement Clause**
 47. The Agreement wholly governs all dealings between the parties with respect to the Restaurant;
 48. In the Agreement itself, the parties set out all of their respective rights and obligations;
 49. As such the parties included the following entire agreement clause:

"9.9. This agreement constitutes the entire agreement between the Parties in respect of its subject matters and supersedes all prior agreements, understandings and discussions, whether oral or written, between the Parties. There are no warranties, representations or other agreements between the Parties in connection with the subject matters dealt with in this agreement except as specifically set forth in this agreement."
 50. In addition, clause 9.10 states that:

"No change or modification of this agreement shall be valid unless it is in writing and signed by each Party hereto."

51. Consequently, any claim or allegation that one of the parties to the Agreement is subject to an obligation not stipulated in writing in the Agreement would be without basis;

(vii) Governing Law and Forum Selection

52. The Agreement provides that the competent courts sitting in the Province of Quebec, district of Montreal, shall have exclusive jurisdiction over any dispute related to this Agreement, as per clause 9.8;
53. The Agreement also stipulates that it shall be governed by the laws of England;
54. Therefore, in due time, Plaintiff will submit to the Court a *jurisconsult* certificate from an English attorney in good standing, outlining the relevant English laws that are applicable to the present case;

C. EVENTS LEADING TO THE INSTITUTION OF THE PRESENT CLAIM

(i) Opening of the Restaurant

55. The Restaurant opened to the public as the Laurier Gordon Ramsay on August 9, 2011;
56. The Restaurant's launch was extremely successful and reported on by local and international media;
57. In the months following the opening, the Restaurant continued to be a success and frequently attracted long line-ups;
58. Gross sales for the period from August 10, 2011 until January 15, 2012 were \$2,330,110, while Net Sales (as defined in the Agreement) for this same period were \$2,300,902;
59. At no point prior to December 2011, did Defendants indicate that they were dissatisfied with the association of Plaintiff's name and likeness with the Restaurant, nor did Defendants advise Plaintiff of any material breach of the terms of the Agreement;

(ii) Unfounded Complaints and Termination of Agreement by Defendants

60. As is further outlined below, Defendants sought to terminate the Agreement on an improper basis and for false and fallacious reasons;

61. Defendant 9226's management, in emails sent to Plaintiff's team in November 2011, demonstrated a fundamental lack of understanding of the parties' obligations under the Agreement. Defendant 9226's General Manager, Marie Christine Couture ("**Ms. Couture**"), wrote the following:

- i. *"I would need your vision in order to put our ideas together and develop a strategy for our Mondays and Tuesdays, [...] I would like for you to think of a strategy and we can talk about on the conference call. I also want to talk about the lunch special with you"* in a November 1, 2011 e-mail; and
- ii. *"I really need to know when Gordon will be able to visit us to maximize the impact of his visit. I also need all the actions that the Gordon Ramsay Team are planning to implement detailed on a weekly basis for the next three months"* in a November 11, 2011 e-mail;

As it appears from a copy of these e-mails, communicated in support hereof as **Exhibits P-3 and P-4**, respectively;

62. In mid-December, Defendant 9226 began to make unfounded and irrelevant complaints. For example, in an e-mail dated December 13, 2011, Ms. Couture stated;

- i. that Plaintiff and his team showed a lack of knowledge of the Montreal market; and
- ii. that Plaintiff and his team had not provided the group with "*concrete and innovative promotion and marketing initiatives*";

As it appears from a copy of the e-mail sent by Ms. Couture and dated December 13, 2011, communicated in support hereof as **Exhibit P-5**;

63. Defendant Lavy repeated Ms. Couture's illegitimate concerns and again misstated Plaintiff's obligations under the Agreement in a December 28, 2011 letter in which Defendant Lavy wrote that 9226 would "*fully exercise our rights to manage the operations of the Restaurant*", as it appears from a copy of this letter from Defendant Lavy dated December 28, 2011, communicated in support hereof as **Exhibit P-6**;

64. The above statement indicates that Defendant Lavy was fully aware that it was 9226, and not Plaintiff, which had sole responsibility for the operation of the Restaurant;

65. In the December 28, 2011 letter (Exhibit P-6), Defendant Lavy also complained that Plaintiff and his team provided the Restaurant with insufficient promotional support;

66. Specifically, Defendant Lavy complained that Plaintiff had not made a return visit to the Restaurant despite their repeated demands;
67. In this same letter (Exhibit P-6), Defendant Lavy further alleged that the Restaurant had incurred substantial losses on account of the actions or omissions of Plaintiff's team;
68. However, Defendant Lavy did not provide (and has not provided to date) any evidence of such losses;
69. In addition, by letter dated January 12, 2012, Defendant 9226 informed the Plaintiff that they had (i) terminated the employment of Mr. Guillermo Russo ("**Russo**"), the Restaurant's Executive Chef, and (ii) were promoting as his replacement a junior chef already working at the Restaurant, as it appears from a copy of two letters from the Restaurant's General Counsel, Mtre. Marie-Michèle Normandeau, to Plaintiff's team, dated January 12 and 13, 2012, communicated in support hereof as **Exhibits P-7 and P-8**, respectively;
70. Russo, as Executive Chef, had a very important role at the restaurant: he was responsible for the quality of the food served and for making sure that the kitchen ran effectively and efficiently;
71. Despite Russo's key role in the operations and public relations related to the Restaurant, Defendants did not inform Plaintiff of Russo's impending dismissal or of the reasons for that dismissal;
72. Indeed, despite requests made by Plaintiff's representatives, Defendants refused to provide Plaintiff and/or his team with coherent information related to the circumstances surrounding Russo's dismissal;
73. As described above, less than 6 months following the Restaurant opening, Defendants purported to terminate the Agreement with Plaintiff in a letter dated January 30, 2012, as it appears from a copy of the letter, communicated in support hereof as **Exhibit P-9**;
74. In this letter (Exhibit P-9), Defendant 9226 did not allege any material breach of the Agreement, nor did the letter comply with any of the termination provisions set out in the said Agreement;
75. Finally, Defendants relied upon false allegations, including those detailed above, as the purported basis for terminating the Agreement in the aforementioned January 30, 2012 letter (Exhibit P-9);
76. The January 30, 2012 letter (Exhibit P-9) complained, amongst other things, that *"no support was provided by the Gordon Ramsay team to the new kitchen employees (including the new Executive Chef) such as that consistently provided to Guillermo Russo"*;

77. However, in the December 28, 2011 letter (Exhibit P-6) from Defendants, Plaintiff was notified that they would *"fully exercise our rights to manage the operations of the Restaurant"*;
78. Further, it is noted that the letter of January 30, 2012, came only seventeen (17) days after Plaintiff received Defendants' letter of January 12, 2012 informing him of the dismissal of Russo – in short, little time was allowed for Plaintiff to provide such support, even had he been obligated to do so (which he was not);
79. None of the various complaints put forward by Defendants were supported by any evidence at all, nor was it ever explained how the matters complained of constituted a breach of the Agreement. Further, Plaintiff was not afforded any time to remedy the issues alleged by Defendants, despite clause 8.5 of the Agreement clearly providing that a party in material breach should be given thirty (30) days in which to remedy that breach;
- (iii) **Plaintiff's Fulfillment of the Contractual Obligations under the Agreement**
80. As already mentioned, under the Agreement, 9226 is solely responsible for managing and operating the Restaurant and Plaintiff had no obligations in this regard;
81. Plaintiff was not required to provide advice, develop concrete promotional or marketing initiatives on behalf of Defendant 9226, or make regular appearances at the Restaurant under the terms of the Agreement;
82. Although he had no obligations to do so under the Agreement, in order to assist Defendant 9226 with the opening of the Restaurant, Plaintiff arranged for Ms. Andi van Willigan ("**Ms. van Willigan**"), a chef who provides consultancy services, to provide on-site assistance at the Restaurant in the weeks running up to its opening, as well as to be present at the opening and for the first week afterwards, in order to assist with the setting up of the Restaurant. Ms van Willigan was also supported by two (2) assistants provided by Plaintiff;
83. The assistance provided by Ms. van Willigan included the following:
- i. Advising Defendant 9226 on the appointment of a PR agency and working with that agency to manage the launch of the Restaurant;
 - ii. Devising the menu for the Restaurant;
 - iii. Interviewing candidates for the position of Executive Chef;
 - iv. Advising Defendant 9226 regarding the layout of the kitchen;

- v. Training members of staff of the Restaurant in basic restaurant administration, including the preparation of daily logs and profit and loss accounts; and
 - vi. After the Restaurant's opening, having weekly conference calls with the Restaurant's managers in order to discuss operational issues. These continued until the dismissal of Russo on or about January 12, 2012;
84. This assistance was provided by Plaintiff, at no cost to Defendant 9226, over and above his obligations under the Agreement, in order to give the Restaurant the best prospect of a successful opening;
 85. Plaintiff was present on the day of the Restaurant's opening on August 16, 2011;
 86. During the course of that day, he gave approximately ten (10) face-to-face interviews as well as a cooking demonstration to approximately fifteen (15) journalists;
 87. Plaintiff also attended the opening party in the evening, at which he gave approximately ten (10) television interviews;
 88. Plaintiff further publicised the Restaurant by having a permanent link to it on his website www.gordonramsay.com, and by posting periodic tweets on his Twitter account promoting the Restaurant;
 89. On February 11, 2012, UK counsel for Plaintiff reaffirmed by letter to Defendant 9226's legal counsel that their client had fulfilled all of his contractual obligations and had provided assistance which went above and beyond what was required by the Agreement, as it appears from a copy of this letter, communicated in support hereof as **Exhibit P-10**;
 90. The February 11, 2012 letter (Exhibit P-10) further stated that Defendant 9226's purported termination of the Agreement on the basis of the false and spurious pretexts set out in its January 30, 2012 letter (Exhibit P-9), constituted a repudiatory breach of the Agreement, for which Plaintiff was entitled to terminate the Agreement;
 91. As such, Plaintiff elected to terminate the Agreement and to seek damages for Defendants' actions, as it appears from Exhibit P-10;
 92. In that same letter (Exhibit P-10), Plaintiff also demanded that Defendant 9226 pay to him:
 - i. The Licence Fees due and owing for the fourth quarter of 2011 in the amount of \$109,121.25;

- ii. The expenses in the amount of \$23,425.94, incurred by Plaintiff in visiting the Restaurant, pursuant to clause 3.8 of the Agreement and evidenced by a copy of the December 5, 2011 invoice issued by Gordon Ramsay Holdings Ltd., communicated herewith as **Exhibit P-11**; and
 - iii. The future Licence Fees which would have been payable but for Defendants' repudiatory breach, in the amount of \$2,025,000;
- 93. Further, Plaintiff demanded that Defendants pay interest on the unpaid Licence Fees in accordance with the Agreement, as it appears from Exhibit P-10;
- 94. On February 15, 2012, Defendants' attorneys replied to the above-mentioned February 11, 2012 correspondence (Exhibit P-10), taking act of the termination of the Agreement and providing Plaintiff with a deadline in which to provide suggestions as to a communications strategy regarding the termination of Plaintiff's association with the Restaurant. Plaintiff was given until February 17, 2012, at 5:00 p.m. to suggest such a communications strategy, as it appears from a copy of the said February 15, 2012 letter from Mtre. Eric Azran, communicated in support hereof as **Exhibit P-12**;
- 95. On February 16, 2012, Plaintiff's UK attorney responded to the February 15, 2012 letter (Exhibit P-12) by e-mail, requesting that all references to the Plaintiff's name be removed from the Restaurant premises, as it appears from a copy of the said February 16, 2012 e-mail from Mr. Jeremy Hertzog, communicated in support hereof as **Exhibit P-13**;
- 96. However, as demonstrated below, Defendants made defamatory public statements regarding the termination of Plaintiff's association with the Restaurant prior to receiving the February 16, 2012 e-mail and prior to the expiry of the deadline imposed for a response set out in the February 15, 2012 letter (Exhibit P-12);
- (iv) **Public Statements Made by Defendant Lavy Personally and on Behalf of Defendant 9226**
- 97. Despite having acknowledged the commercial value of Plaintiff's name, likeness and recipes, Defendants made false allegations about Plaintiff and did so with full knowledge that such statements were not only false but would harm Plaintiff;
- 98. On or around February 15, 2012, Defendants changed the name of the Restaurant from the Laurier Gordon Ramsay to "the Laurier 1936";

99. Also, on or around February 16, 2012, the local and international press announced that Plaintiff's name and likeness would no longer be associated with the Restaurant;
100. The articles which appeared in the local and international press on February 16, 2012 included statements from Defendant Lavy, which clearly had been provided to the media on February 15, 2012, in time for release the following day and which misstate the role of Plaintiff in the Restaurant and portray him as an absentee partner;
101. Further, Defendants, in their public statements, falsely attributed the termination of the business relationship between the parties solely to actions and omissions of Plaintiff and his team, including Plaintiff's alleged failure to understand what was important to the Restaurant, and to sufficiently promote the Restaurant;
102. Set out below are comments made by Defendant Lavy to the Montreal Gazette, which were published on February 16, 2012:

- i. The Plaintiff was *"too busy to come to the restaurant"*;
- ii. *"He didn't have the time to manage it"*;
- iii. *"There was nothing they [the Plaintiff's team] did we couldn't have done on our own"*;
- iv. The Plaintiff *"didn't understand our vision"*;
- v. The Plaintiff *"didn't understand what was important to us"* and he *"wanted to get rid of the original staff"*;
- vi. The Plaintiff *"wouldn't even do Tout le Monde en Parle"* and *"never showed up"*;
- vii. *"We got nothing that was ever a 'wow' dish", instead just "a few tweaks on what we already had"*; and
- viii. The Plaintiff did not participate and *"just didn't get it"*;

as appears from a copy of the article *"Laurier BBQ cuts ties with star chef Gordon Ramsay"* dated February 16, 2012, published in the Montreal Gazette, and communicated in support hereof as **Exhibit P-14**;

103. This article (the "Article") was also published online by the Montreal Gazette (www.montrealgazette.com) and therefore is available in the province of Québec and globally, as appears from a copy of the online version of the article *"Laurier BBQ cuts ties with star chef Gordon Ramsay"*, communicated herewith as **Exhibit P-15**;

104. These public statements were reproduced in many other publications, accessible and distributed in Montreal, as well as internationally, including but not limited to: *La Presse*, the *Ottawa Citizen*, the *National Post*, *The Globe and Mail*, *CBC News* and *CTV* in Canada, *The Independent*, *The Telegraph*, *The Daily Mail* in the UK, *The Hollywood Reporter* and *Eater National* in the U.S.A., as well as industry websites such as *Caterer* and *HotelKeeper* and *Big Hospitality*, all of which are also available online (the "**Further Articles**"), as appears from a copy of these different publications, communicated *en liasse* in support hereof as **Exhibit P-16**;
 105. Consumers of Plaintiffs' goods and services (such as his books and endorsed products) accessed in the province of Québec these media reports containing the defamatory statements and Plaintiff's reputation suffered and continues to suffer as a result of Defendants' statements;
 106. Further, the statements made by Defendants are damaging to and/or undermine the Licensed Rights and the reputation of Plaintiff, contrary to clause 2.6.5 of the Agreement;
 107. In addition, these statements are false and therefore defamatory in nature, giving rise to civil liability under the *Civil Code of Quebec*, for which moral and punitive damages should be ordered;
 108. On March 8, 2012, Plaintiff's attorney sent a demand letter to Defendants requesting that they retract the public comments made, as appears from a copy of the letter communicated in support hereof as **Exhibit P-17**;
 109. On March 15, 2012, the undersigned attorneys received a letter from counsel for Defendants denying the truth of the contents of the March 8, 2012 demand letter (Exhibit P-17) and indicating that Defendants refuse to comply with Plaintiff's request that the public comments be retracted;
 110. Consequently, Plaintiff has no other choice but to seek the intervention of this Court in order to obtain compensation for the moral damages suffered by him and to obtain punitive damages from Defendants;
- (v) **Breaches and Responsibility of Defendant Lavy Personally**
111. Defendant Lavy has undertaken the above actions on his own behalf and has actively interfered in the contractual relations between Plaintiff and Defendant 9226;
 112. While he is a co-shareholder and one of four (4) directors of Defendant 9226, Defendant Lavy was and remains the corporation's controlling mind;
 113. In fact, during the entire business relationship between the parties, Defendant Lavy represented himself as being the sole representative of

Defendant 9226, to the extent that Plaintiff and his representatives were wholly unaware of the other directors of, and other shareholder in Defendant 9226;

114. Defendant Lavy personally wrote, in his personal capacity, to Plaintiff's representatives on a number of occasions, including in his letter of 28 December 2011. Ms. Couture, the Restaurant's "General Director", was subordinate to Defendant Lavy in all matters, and it is noticeable that all of her letters to Plaintiff's representatives were copied to him;
115. Defendant Lavy induced and caused Defendant 9226 to breach the Agreement with Plaintiff. As is further outlined below, Defendants' repudiatory breach of the Agreement is part of a larger dispute between Defendant Lavy and Plaintiff;
116. In fact, Defendant Lavy also controls a Canadian-registered company, Sensio, Inc. ("**Sensio**"), which exploits, via a sub-license, the brand of Ramsay-named kitchenware products in the USA and Canada, as appears from a copy of the registration of Sensio from the *Registre des entreprises du Québec*, communicated in support hereof as **Exhibit P-18**;
117. In October 2011, both Defendant Lavy and Sensio issued proceedings in the Circuit Court of Cook County, Illinois County Department, USA (the "**Illinois Claim**"), against Plaintiff personally, and two companies ultimately controlled by Plaintiff, namely Gordon Ramsay Holdings International Limited (the head licensor in respect of the aforementioned sub-license) and Gordon Ramsay Holdings Limited, as it appears from a copy of these proceedings, communicated herewith as **Exhibit P-19**;
118. Defendant Lavy and Sensio are claiming a breach of the sub-license in the proceedings, as well as various other related issues, as appears from the allegations of the Illinois Claim (Exhibit P-19);
119. Although the particular facts to the American proceedings are not relevant to the current proceedings, Defendant Lavy has used his position as a shareholder, director, and officer of Defendant 9226 to induce it to breach the Agreement as part of the wider fall-out between the parties, rather than because of any genuine belief that Plaintiff is in breach of the Agreement;
120. Furthermore, as described above, Defendant Lavy has made statements which weaken, damage or are detrimental and prejudicial to the goodwill associated with the Licensed Rights, and to Plaintiff personally;

D. DAMAGES CLAIMED

121. As described above at paragraph 32, Plaintiff was and remains entitled to be paid Licence Fees equal to 8 percent of the Net Sales under the terms of clause 3.1 of the Agreement;
122. Furthermore, under the terms of clause 3.2 of the Agreement, any unpaid Licence Fees accrue interest at a rate of 8 percent per annum, starting seven (7) days following written notice by Plaintiff of the outstanding fees owed to him;
123. The Licence Fees to which Plaintiff is entitled for the fourth quarter of 2011 are still owing to him, being \$109,120.25.
124. In addition, Plaintiff is owed the Licence Fees for the period from January 1, 2012 to February 11, 2012. The Licence Fees of \$51,780.96 for this period have been calculated based on the average daily Licence Fees of \$1,232.88 earned for the period from August 9 2011 until December 31, 2011 (in total, Licence Fees during this period were \$173,647.25);
125. The future Licence Fees of \$2,023,156 for the period February 12, 2012 to August 9, 2016 (a total of 1,641 days), which would have been payable but for Defendants' repudiatory breach resulting in termination of the Agreement, are projected using the average daily Licence Fees earned for the period from August 9, 2011 to December 31, 2011, referred to at paragraph 124, above;
126. The amount of \$23,425.94 representing the costs incurred by Plaintiff in visiting and promoting the Restaurant at the opening in August 2011, remains due and owing to the Plaintiff pursuant to clause 3.8 of the Agreement and the invoice issued by Gordon Ramsay Holdings Ltd. (Exhibit P-11), plus interest thereon;
127. Plaintiff is also entitled to claim moral damages in the amount of \$250,000 resulting from the defamatory public statements made by the Defendant Lavy personally, and on behalf of Defendant 9226, as described above, as well as punitive damages in the amount of \$250,000 due to the intentional and malicious nature of the above-mentioned defamatory public statements;
128. At this stage of the proceedings, Plaintiff cannot assess with certainty if he has suffered or will suffer pecuniary damages due to Defendants' public defamatory comments, and does therefore hereby reserve his right to claim further reparation for any pecuniary damage caused to his reputation;
129. The whole cause of action arose in the province of Québec, judicial district of Montréal;

WHEREFORE, PLAINTIFF PRAYS THIS HONOURABLE COURT TO:

- A) GRANT** the present motion;
- B) CONDEMN** the Defendants *in solidum* to pay to Plaintiff the following:
 - i. The Licence Fees due and owing for the fourth calendar quarter of 2011, in the amount of \$109,120.25, plus interest thereon at a rate of 8 percent per annum from January 30, 2012;
 - ii. The Licence Fees due and owing for the period from January 1, 2012 to February 11, 2012, in the amount of \$51,780.96, plus interest thereon at a rate of 8 percent per annum from February 18, 2012;
 - iii. The future Licence Fees which would have been payable but for Defendants' repudiatory breach, in the amount of \$2,023,156 from February 12, 2012 until August 9 2016;
 - iv. The amount of \$23,425.94 for payment of travelling costs, plus interest thereon;
 - v. Moral damages in the amount of \$250,000, for the defamatory comments made against Plaintiff in the media;
 - vi. Punitive damages in the amount of \$250,000, for the defamatory comments made against Plaintiff in the media, which Defendants knew or were aware would have a prejudicial impact on Plaintiff's reputation; and
 - vii. The legal costs incurred by Plaintiff to enforce and protect his rights under the Agreement, pursuant to clause 7.1 of the Agreement, as well as the legal costs incurred by him to protect and mitigate the damage to his reputation;

C) **THE WHOLE** with costs, including the costs of experts.

MONTREAL, this 16th day of March 2012

BORDEN LADNER GERVAIS S.E.N.C.R.L., S.R.L./LLP

BORDEN LADNER GERVAIS LLP
Attorneys for Plaintiff, Mr. Gordon James
Ramsay

CONFIDENTIAL CONFIDENTIAL
TRUE CERTIFIED COPY
Borden Ladner Gervais LLP

Borden Ladner Gervais, S.R.L., S.E.N.C.R.L./LLP

NOTICE TO DEFENDANTS

(Art. 119 C.C.P.)

TAKE NOTICE that Plaintiff has filed this action or application in the office of the SUPERIOR COURT (Name of court) of the judicial district of Montreal.

To file an answer to this action or application, you must first file an appearance, personally or by advocate, at the Courthouse of Montreal located at 1 Notre-Dame Street East within ten (10) days of service of this motion.

If you fail to file an appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10-day period.

If you file an appearance, the action or application will be presented before the Court on **April 25, 2012**, at 9:00 a.m., in room **2.16** of the Montreal Courthouse located at 1 Notre-Dame Street East. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the Court may hear the case, unless you have made a written agreement with Plaintiff or Plaintiff's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the Court.

In support of the motion to institute proceedings, Plaintiff discloses the following exhibits:

- | | |
|-------------|--|
| Exhibit P-1 | Copy of the registration of 9226-7558 Québec Inc. from the <i>Registre des entreprises du Québec</i> ; |
| Exhibit P-2 | <i>En liasse</i> , copy of the Licence Agreement dated July 25, 2011 and emails enclosing signature pages; |
| Exhibit P-3 | Copy of an email sent by Ms. Marie-Christine Couture to Plaintiff's team on November 1, 2011; |
| Exhibit P-4 | Copy of an email sent by Ms. Marie-Christine Couture to Plaintiff's team dated November 11, 2011; |
| Exhibit P-5 | Copy of an email sent by Ms. Marie-Christine Couture to Plaintiff's team December 13, 2011; |
| Exhibit P-6 | Copy of a letter from Mr. Danny Lavy to Plaintiff dated December 28, 2011; |

- Exhibit P-7 Copy of a letter from the Restaurant's General Counsel, Mtre. Marie-Michèle Normandeau, to the Plaintiff's team dated January 12, 2012;
- Exhibit P-8 Copy of a letter from the Restaurant's General Counsel, Mtre. Marie-Michèle Normandeau, to the Plaintiff's team dated January 13, 2012;
- Exhibit P-9 Copy of a letter from Defendants to the Plaintiff dated January 30, 2012;
- Exhibit P-10 Copy of a letter from UK Counsel for the Plaintiff to Mtre. Eric Azran dated February 11, 2012;
- Exhibit P-11 Copy of an invoice issued by Gordon Ramsay Holdings Ltd. and dated December 5, 2011,
- Exhibit P-12 Copy of a letter from letter from Mtre. Eric Azran dated February 15, 2011;
- Exhibit P-13 Copy of an e-mail from Mr. Jeremy Hertzog dated February 16, 2012;
- Exhibit P-14 Copy of an article entitled "*Laurier BBQ cuts ties with star chef Gordon Ramsay*" dated February 16, 2012 and published in the Montreal Gazette;
- Exhibit P-15 Copy of the online version of the article entitled "*Laurier BBQ cuts ties with star chef Gordon Ramsay*";
- Exhibit P-16 *En liasse*, copy of articles from the following publications: *La Presse*, the *Ottawa Citizen*, the *National Post*, *The Globe and Mail*, *CBC News*, *CTV*, *The Independent*, *The Telegraph*, *The Daily Mail*, *The Hollywood Reporter* and *Eater National*;
- Exhibit P-17 Copy of the demand letter from Plaintiff's attorney to Defendants dated March 8, 2012;
- Exhibit P-18 Copy of the registration of Sensio, Inc. from the *Registre des entreprises du Québec*;
- Exhibit P-19 Copy of proceedings instituted by Danny Lavy and Sensio, Inc. in the Circuit Court of Cook County, Illinois County Department, USA, dated October 2011.

These exhibits are available on request.

Request for transfer of a small claim

If the amount claimed by the plaintiff does not exceed \$7,000, exclusive of interest, and if you could have filed such an action as a plaintiff in Small Claims court, you may make a request to the clerk for the action to be disposed of pursuant to the rules of Book VIII of the Code of Civil Procedure (R.S.Q., c. C-25). If you do not make such a request, you could be liable for costs higher than those provided for in Book VIII of the Code.

Montreal, March 16, 2012

BORDEN LADNER GERVAIS S.E.N.C.R.L., S.R.L./LLP

BORDEN LADNER GERVAIS, LLP
Attorneys for Plaintiff, Gordon James
Ramsay

Borden Ladner Gervais LLP